

Mohan Vs. The State, Represented by The Inspector of Police, B9 Saravanampatti Police Station, Coimbatore

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Court : Chennai

Decided On : Dec-07-2016

Judge : S. Nagamuthu & N. Authinathan

Appeal No. : Criminal Appeal No. 617 of 2016

Appellant : Mohan

Respondent : The State, Represented by The Inspector of Police, B9 Saravanampatti Police Station, Coimbatore

Judgement :

(Prayer: Criminal Appeal filed under Section 374(2) Cr.P.C., by the appellant/sole accused against the judgment dated 23.02.2015 in S.C.No.123 of 2014 on the file of the learned Mahila Sessions Judge, Coimbatore.)

S. Nagamuthu. J.

1. The appellant is the sole accused in S.C.No.123/2014 on the file of the learned Mahila Sessions Judge, Coimbatore. He stood charged for offence under Section 302 I.P.C. By judgment dated 23.02.2015, the trial Court convicted him for offence under Section 302 I.P.C., and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court

with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

The deceased in this case was one Mrs.Rajeswari. She was originally given in marriage to one Mr.Kalidas. Out of the said wedlock, she was pregnant. When she was pregnant by two months, her husband deserted her. Therefore, she returned to her parental home. A male child was born to her. Until the child was 5 years old, the deceased was with her parents. Thereafter, the accused approached the mother of the deceased viz., P.W.1 and wanted to marry the deceased. He expressed that he would give life to the destitute woman namely, the deceased. Accordingly, the marriage was celebrated between the accused and the deceased. At the time of marriage, the accused promised that he would keep the child of the deceased also and treat the child as if his child. But, within one week from the date of marriage, the accused started ill-treating the deceased. The deceased returned to her parental home and the accused again went to the house of P.W.1 and persuaded the deceased and brought her back to his house. Likewise, on few occasions, again and again the deceased was harassed by the accused and she returned to her parental home. Finally, few days before 16.09.2013, the deceased was taken to his house by the accused by persuading her. On 16.09.2013, it is alleged that the deceased gave a phone call to P.W.1 and informed that she has been harassed by the accused. Therefore, around 9.00 pm, on 16.09.2013, P.Ws.1 and 2 namely, the mother and brother respectively of the deceased, had gone to the house of the accused. They found the electric lights both inside and outside of the house burning and the door was locked from inside. When they knocked the door, there was no response and when they tried to break open the door, the accused opened the door and ran away from the scene of occurrence. While entering into the house, P.Ws.1 and 2 saw the deceased in flames. P.W.2 put out the fire with the help of neighbours and immediately P.Ws.1 and 2 took the deceased to the Coimbatore Government Hospital and admitted her.

3. P.W.9-Dr.Sekar, examined the deceased while she was admitted in the hospital. He found the deceased in a conscious state of mind. She told the Doctor that while she was at her home at 9.00 pm on 16.09.2013, her husband poured

kerosene and set fire on her. P.W.9 entered the same in an accident register. He further recorded that the deceased was brought to the hospital by her mother (P.W.1). On getting information from the hospital, P.W.8, the then Sub Inspector of Police, B.5 Singanallur Police Station, went to the hospital and recorded the statement of the deceased. On returning to the Police Station, she registered a case in Crime No.1496/2013 for offence under Section 307 I.P.C. Ex.P.1 is the said statement of the deceased and Ex.P.10 is the F.I.R.

4. Similarly, on receiving intimation from the hospital, the learned Judicial Magistrate No.2, Coimbatore, rushed to the hospital and recorded the dying declaration of the deceased at 12.50 am on 17.09.2013. One Dr.Tamil Selvan who was attending the deceased opined that the deceased was in a fit state of mind to make a dying declaration. Ex.P.6 is the judicial dying declaration.

5. The case was taken up for investigation by P.W.10, the then Inspector of Police on 17.09.2013 at 8.00 am. According to her, she went to the place of occurrence, prepared an observation mahazar; a rough sketch; recovered a kerosene stove; a metal cap and a match box in the presence of witnesses. He examined P.Ws.1 and 2 and recorded their statements. Thereafter, she went to the hospital where, the accused was undergoing treatment for burn injuries. He arrested the accused at 1.30 pm on 17.09.2013, in the presence of witnesses. The deceased who was treated in the same hospital died on 14.10.2013. P.W.10 held inquest on the body of the deceased and forwarded the same for post mortem.

6. P.W.3 Dr.Jayasingh, conducted autopsy on the body of the deceased. He found extensive burn injuries on the body of the deceased. He gave opinion that the death of the deceased was due to burn injuries. Ex.P.4 is the post mortem certificate.

7. P.W.10, during the course of investigation, recovered the blood stained clothes from the body of the deceased. She forwarded all the material objects to Court. On completing investigation, she laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed a lone charge against the accused for offence under Section 302 I.P.C. The accused denied the same. In

order to prove the case of the prosecution, on the side of the prosecution, as many as 10 witnesses were examined and 14 documents were exhibited, besides 7 Material Objects were marked.

9. Out of the said witnesses, P.Ws.1 and 2 are the mother and brother respectively of the deceased. Both of them have spoken about the marriage held between the deceased and the accused. They have further spoken about the frequent quarrel between the deceased and the accused. On the date of occurrence, on receiving intimation from the deceased that the accused was harassing her, both of them went to the house of the accused and where they saw the electric wires inside and outside of the house were burning and the door was locked from inside. When they tried to break open the door, the accused opened the door and ran away from the scene of occurrence and the deceased was in flames. P.W.2 put out the fire with the help of neighbours. Thereafter, both P.Ws.1 and 2 took the deceased to the Government Hospital at Coimbatore. P.W.3 has spoken about the post mortem conducted by him and his final opinion regarding the cause of death of the deceased. P.W.4 Dr.Bhuvana has spoken about the treatment given by her to the deceased at Government Hospital, Coimbatore. According to her, the deceased told her that her husband poured kerosene and set fire on her. P.W.5 Mr.Vijay Karthik, learned Judicial Magistrate has spoken about the dying declaration made by the deceased. P.W.6 Dr.Tamil Selvan has spoken about the certificate issued by him to the learned Judicial Magistrate about the mental fitness of the deceased for the purpose of recording the dying declaration. P.W.7, has spoken about the statement of the deceased recorded by her on 17.09.2013. Ex.P.9 is the said statement. P.W.8 has stated that based on Ex.P.9, she registered the case. P.W.9 has spoken about the arrest of the accused in the hospital. P.W.10 has spoken about the investigation done and the final report filed in this case.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

11. Having considered all the above materials, the trial Court convicted the appellant for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

12. We have heard the learned counsel for the appellant/accused who has been appointed as legal-aid counsel and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

13. In this case, the prosecution has mainly relied on the eye witness account of P.Ws.1 and 2 and three dying declarations made by the deceased in quick succession. The earliest dying declaration was made by the deceased to P.W.4 Dr.Bhuvana, when she was brought to the Government Hospital at Coimbatore by P.W.1. At that time, the deceased told P.W.4 that while she was at her house, the accused poured kerosene and set fire on her. The other dying declarations are the judicial dying declaration recorded by P.W.5-the learned Judicial Magistrate and the statement made by the deceased while she was in the hospital to P.W.7-the then Head Constable, he contended.

14. The learned counsel for the appellant would submit that P.Ws.1 and 2 would not have seen the occurrence at all and their presence at the place of occurrence is highly doubtful. These three dying declarations have been made by the deceased only out of tutoring by P.Ws.1 and 2 due to animosity.

15. The learned Additional Public Prosecutor would refute the said argument. According to him, there is no inconsistency between these three dying declarations which were made in quick succession. The presence of P.ws.1 and 2 at the place of occurrence also cannot be doubted. Therefore, according to him, the conviction and sentence imposed by the trial Court may be confirmed.

16. In reply, the learned counsel for the appellant would submit that the fact remains that the accused also sustained injuries in the very same occurrence and while he was undergoing treatment for the burn injuries suffered, he was arrested by P.W.10. But, no medical records have been produced. The learned counsel would further submit that there was no investigation done at all in respect of the

injuries sustained by the accused. Thus, according to the learned counsel, the prosecution has not come forward with the true version of the occurrence.

17. We have considered the above submissions.

18. It is true and well settled position of law that if the dying declaration inspires the confidence of the Court that by itself can be the foundation to convict the accused, even in the absence of any corroboration from any other source. It is only in a case where, the dying declaration is shrouded with any doubt, the same needs corroboration from independent sources. Here, in this case, there are three dying declarations in quick succession. The earliest one was made by the deceased to P.W.4; the second one was made to P.W.5 and the third one was made to P.W.7. In all these three dying declarations, ofcourse, the deceased has stated that the accused poured kerosene and set fire on her but, in none of the dying declarations, the deceased has stated anything about the injuries sustained by the accused, in the very same occurrence. According to these dying declarations, the fire was put out only by P.W.2 and the other neighbours. There is nothing stated in these there dying declarations that the accused also tried to extinguish the fire. The deceased had only stated that after setting fire, the accused ran away from the place of occurrence. Thus, it is crystal clear that the deceased has not stated the true version before these three witnesses who have recorded the dying declarations from the deceased. The deceased has suppressed the fact as to how the accused sustained injuries. The fact remains that while undergoing treatment in the same hospital, where the deceased was admitted for treatment, P.W.10, arrested the accused. However, P.W.10 has not chosen to do any investigation in respect of the injuries sustained by the accused. He has not even cared to collect the medical records pertaining to the accused. Thus, the investigation was not taken in the right direction and it was not thoroughly investigated to find out the cause for the injuries sustained by the accused.

19. Similarly, the evidences of P.Ws.1 and 2 also deserve to be rejected that they have not stated about the injuries sustained by the accused though, the fact remains that the accused was in the hospital for many days. It is not explained to

the Court as to why P.Ws.1 and 2 in their evidences had omitted to mention about the injuries sustained by the accused in the same occurrence. It is not even stated who took the accused to the hospital and who admitted him in the hospital. This would only give an inference that P.Ws.1 and 2, out of animosity, have tutored the deceased to make such dying declarations against the accused by suppressing the facts. In an identical situation in (1976) 4 Supreme Court Cases 394, Lakshmi Singh and others vs. State of Bihar, the Hon'ble Supreme Court has held as follows:-

"In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences :

1. that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version ;
2. that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable ;
3. that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

20. Applying the said yardstick to the facts of the case, we have to hold that it is not safe to act on the alleged dying declarations. Further, the evidence of P.Ws.1 and 2 also cannot be believed as they have also not spoken about the injuries sustained by the accused in the very same occurrence. The statement of the accused that out of depression, the deceased had poured kerosene and set fire on herself appears to be reasonable. This alternate theory has not been ruled out by the prosecution.

21. In such view of the matter, we hold that it is too difficult to act upon the evidences of P.Ws.1 and 2 and the alleged dying declarations that too in the absence of any other independent source, so as to sustain the conviction imposed

on the accused. In our considered view, the appellant is therefore, entitled for acquittal as the prosecution has failed to investigate the injuries sustained by the accused in the very same occurrence and also failed to prove the case beyond reasonable doubt.

22. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Mahila Sessions Judge, Coimbatore in S.C.No.123 of 2014, dated 23.02.2015, are set aside and the accused/appellant is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the accused/appellant, shall stand discharged.

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